



Wanted today 1/13
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-4045/P1
RPN:wlj:jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION stays.

Regen

1 AN ACT *to repeal* 343.307 (1) (a) and 346.65 (2) (f) 1.; *to renumber and amend*
2 346.65 (2) (f) 2.; and *to amend* 66.0114 (1) (b), 85.53 (1) (d), 343.16 (5) (a), 343.30
3 (1q) (a), 343.30 (1q) (b) (intro.), 343.30 (1q) (b) 4m., 343.30 (1q) (h), 343.303,
4 343.305 (3) (a), 343.305 (3) (b), 343.305 (5) (b), 343.305 (9) (a) 1., 343.305 (9) (a)
5 5. a., 343.305 (9) (d), 343.307 (1) (c), 343.307 (2) (a), 343.307 (2) (c), 343.44 (2p)
6 (b), 343.44 (2p) (c), 345.20 (2) (c), 345.24 (1), 345.60 (3), 346.63 (4), 346.635,
7 346.65 (2) (am) 1., 346.65 (2e), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2g) (am),
8 346.65 (2g) (d), 346.65 (2i), 346.65 (2m) (a), 346.655 (1), 349.03 (2m), 349.03 (4),
9 349.06 (1m), 800.035 (2) (a) 3., 800.035 (5) (a), 800.035 (5) (c), 967.055 (2) (a),
10 967.055 (3) (a), 967.055 (3) (b) and 972.11 (3m) of the statutes; **relating to:**
11 making the first offense of operating a motor vehicle while under the influence
12 of an intoxicant a crime *for making an appropriation,* and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a first offense of operating a motor vehicle while under the influence of an intoxicant (OWI-related offense) is a civil violation. A person who

commits a first OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

April Under this bill, a person who commits a first OWI-related offense on or after *July* 1, 2015, ~~or the passage of the 2015 biennial budget bill, whichever is later,~~ is guilty of a crime and may be fined not less than \$150 nor more than \$300 and imprisoned for not less than five days ~~for more than 30 days~~, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0114 (1) (b) of the statutes is amended to read:

2 66.0114 (1) (b) Local ordinances, except as provided in this paragraph or ss.
3 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any
4 or all violations under those ordinances, may designate the manner in which the
5 stipulation is to be made, and may fix the penalty to be paid. When a person charged
6 with a violation for which stipulation of guilt or no contest is authorized makes a
7 timely stipulation and pays the required penalty, plus costs, fees, and surcharges
8 imposed under ch. 814, to the designated official, the person need not appear in court
9 and no witness fees or other additional costs, fees, or surcharges may be imposed
10 under ch. 814 unless the local ordinance so provides. ~~A court appearance is required~~
11 ~~for a violation of a local ordinance in conformity with s. 346.63 (1).~~

12 **SECTION 2.** 85.53 (1) (d) of the statutes is amended to read:

13 85.53 (1) (d) "Operating while intoxicated" means a violation of s. 346.63 ~~(1)~~ or
14 (2m) or a local ordinance in conformity therewith or of s. 346.63 (1), (2), or (6), 940.09
15 (1) or 940.25.

1 **SECTION 3.** 343.16 (5) (a) of the statutes is amended to read:

2 343.16 (5) (a) The secretary may require any applicant for a license or any
3 licensed operator to submit to a special examination by such persons or agencies as
4 the secretary may direct to determine incompetency, physical or mental disability,
5 disease, or any other condition that might prevent such applicant or licensed person
6 from exercising reasonable and ordinary control over a motor vehicle. If the
7 department requires the applicant to submit to an examination, the applicant shall
8 pay for the examination. If the department receives an application for a renewal or
9 duplicate license after voluntary surrender under s. 343.265 or receives a report from
10 a physician, physician assistant, as defined in s. 448.01 (6), advanced practice nurse
11 prescriber certified under s. 441.16 (2), or optometrist under s. 146.82 (3), or if the
12 department has a report of 2 or more arrests within a one-year period for any
13 combination of violations of s. 346.63 (1) or (5) or a local ordinance in conformity with
14 s. 346.63 (1) ~~or~~ (5) or a law of a federally recognized American Indian tribe or band
15 in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or
16 s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a
17 vehicle, the department shall determine, by interview or otherwise, whether the
18 operator should submit to an examination under this section. The examination may
19 consist of an assessment. If the examination indicates that education or treatment
20 for a disability, disease or condition concerning the use of alcohol, a controlled
21 substance or a controlled substance analog is appropriate, the department may order
22 a driver safety plan in accordance with s. 343.30 (1q). If there is noncompliance with
23 assessment or the driver safety plan, the department shall revoke the person's
24 operating privilege in the manner specified in s. 343.30 (1q) (d).

25 **SECTION 4.** 343.30 (1q) (a) of the statutes is amended to read:

1 343.30 (1q) (a) If a person is convicted under s. 346.63 (1) ~~or a local ordinance~~
2 ~~in conformity therewith~~, the court shall proceed under this subsection. If a person
3 is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the
4 use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred
5 by the department acting under s. 343.16 (5) (a), the department shall proceed under
6 pars. (c) and (d) without the order of the court.

7 **SECTION 5.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

8 343.30 (1q) (b) (intro.) For persons convicted under s. 346.63 (1) ~~or a local~~
9 ~~ordinance in conformity therewith~~:

10 **SECTION 6.** 343.30 (1q) (b) 4m. of the statutes is amended to read:

11 343.30 (1q) (b) 4m. If there was a minor passenger under 16 years of age in the
12 motor vehicle at the time of the violation that gave rise to the conviction under s.
13 346.63 (1) ~~or a local ordinance in conformity with s. 346.63 (1)~~, the applicable
14 minimum and maximum revocation periods under subd. 2., 3. or 4. for the conviction
15 are doubled.

16 **SECTION 7.** 343.30 (1q) (h) of the statutes is amended to read:

17 343.30 (1q) (h) The court or department shall provide that the period of
18 suspension or revocation imposed under this subsection shall be reduced by any
19 period of suspension or revocation previously served under s. 343.305 if the
20 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63
21 (1) or (2m), or a local ordinance in conformity ~~therewith~~ with s. 346.63 (2m), arise out
22 of the same incident or occurrence. The court or department shall order that the
23 period of suspension or revocation imposed under this subsection run concurrently
24 with any period of time remaining on a suspension or revocation imposed under s.
25 343.305 arising out of the same incident or occurrence. The court may modify an

1 occupational license authorized under s. 343.305 (8) (d) in accordance with this
2 subsection.

3 **SECTION 8.** 343.303 of the statutes is amended to read:

4 **343.303 Preliminary breath screening test.** If a law enforcement officer
5 has probable cause to believe that the person is violating or has violated s. 346.63 (1)
6 ~~or~~ (2m) or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or
7 940.25, or s. 940.09 where the offense involved the use of a vehicle, or if the officer
8 detects any presence of alcohol, a controlled substance, controlled substance analog
9 or other drug, or a combination thereof, on a person driving or operating or on duty
10 time with respect to a commercial motor vehicle or has reason to believe that the
11 person is violating or has violated s. 346.63 (7) or a local ordinance in conformity
12 therewith, the officer, prior to an arrest, may request the person to provide a sample
13 of his or her breath for a preliminary breath screening test using a device approved
14 by the department for this purpose. The result of this preliminary breath screening
15 test may be used by the law enforcement officer for the purpose of deciding whether
16 or not the person shall be arrested for a violation of s. 346.63 ~~(1)~~, (2m), (5), or (7) or
17 a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6), 940.09 (1), or
18 940.25 and whether or not to require or request chemical tests as authorized under
19 s. 343.305 (3). The result of the preliminary breath screening test shall not be
20 admissible in any action or proceeding except to show probable cause for an arrest,
21 if the arrest is challenged, or to prove that a chemical test was properly required or
22 requested of a person under s. 343.305 (3). Following the screening test, additional
23 tests may be required or requested of the driver under s. 343.305 (3). The general
24 penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary
25 breath screening test.

SECTION 9. 343.305 (3) (a) of the statutes is amended to read:

343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest subsequent to a refusal under par. (ar), a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

SECTION 10. 343.305 (3) (b) of the statutes is amended to read:

343.305 (3) (b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) may be administered to the person.

SECTION 11. 343.305 (5) (b) of the statutes is amended to read:

343.305 (5) (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 ~~(1)~~, (2m) or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog or any other drug, or any

1 combination of alcohol, controlled substance, controlled substance analog and any
2 other drug in the blood only by a physician, registered nurse, medical technologist,
3 physician assistant or person acting under the direction of a physician.

4 **SECTION 12.** 343.305 (9) (a) 1. of the statutes is amended to read:

5 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed
6 the person under arrest for a violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance
7 in conformity therewith or s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25 or had
8 requested the person to take a test under sub. (3) (ar).

9 **SECTION 13.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

10 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the
11 person was driving or operating a motor vehicle while under the influence of alcohol,
12 a controlled substance or a controlled substance analog or any combination of
13 alcohol, a controlled substance and a controlled substance analog, under the
14 influence of any other drug to a degree which renders the person incapable of safely
15 driving, or under the combined influence of alcohol and any other drug to a degree
16 which renders the person incapable of safely driving, having a restricted controlled
17 substance in his or her blood, or having a prohibited alcohol concentration or, if the
18 person was driving or operating a commercial motor vehicle, an alcohol
19 concentration of 0.04 or more and whether the person was lawfully placed under
20 arrest for violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity
21 therewith or s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

22 **SECTION 14.** 343.305 (9) (d) of the statutes is amended to read:

23 343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court
24 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined
25 adversely to the person, the court shall proceed under sub. (10). If one or more of the

1 issues is determined favorably to the person, the court shall order that no action be
2 taken on the operating privilege on account of the person's refusal to take the test in
3 question. This section does not preclude the prosecution of the person for violation
4 of s. 346.63 ~~(1)~~, (2m), (5), or (7) or a local ordinance in conformity therewith, or s.
5 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

6 **SECTION 15.** 343.307 (1) (a) of the statutes is repealed.

7 **SECTION 16.** 343.307 (1) (c) of the statutes is amended to read:

8 343.307 (1) (c) Convictions for violations under s. 346.63 (1) or (2) or 940.25,
9 or s. 940.09 where the offense involved the use of a vehicle.

10 **SECTION 17.** 343.307 (2) (a) of the statutes is amended to read:

11 343.307 (2) (a) Convictions for violations under s. 346.63 ~~(1)~~ or (5), or a local
12 ordinance in conformity with either section s. 346.63 (5).

13 **SECTION 18.** 343.307 (2) (c) of the statutes is amended to read:

14 343.307 (2) (c) Convictions for violations under s. 346.63 (1), (2), or (6).

15 **SECTION 19.** 343.44 (2p) (b) of the statutes is amended to read:

16 343.44 (2p) (b) Violating s. 346.63 ~~(1)~~ or (5) or a local ordinance in conformity
17 therewith.

18 **SECTION 20.** 343.44 (2p) (c) of the statutes is amended to read:

19 343.44 (2p) (c) Violating s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

20 **SECTION 21.** 345.20 (2) (c) of the statutes is amended to read:

21 345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
22 actions for violations of s. 346.63 ~~(1)~~ or (5) or a local ordinance in conformity
23 therewith.

24 **SECTION 22.** 345.24 (1) of the statutes is amended to read:

1 345.24 (1) A person arrested under s. 346.63 (1) ~~or~~ (5) or ~~an~~ a local ordinance
2 in conformity therewith or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the
3 offense involved the use of a vehicle, may not be released until 12 hours have elapsed
4 from the time of his or her arrest or unless a chemical test administered under s.
5 343.305 shows that the person has an alcohol concentration of less than 0.04, but the
6 person may be released to his or her attorney, spouse, relative, or other responsible
7 adult at any time after arrest.

8 **SECTION 23.** 345.60 (3) of the statutes is amended to read:

9 345.60 (3) In addition to other penalties provided by law for violation of s.
10 346.63 (1) ~~or a local ordinance in conformity therewith, or s. 346.63 or~~ (1) or 940.25,
11 or s. 940.09 where the offense involved the use of a vehicle, the convicted person may
12 be required under s. 343.30 (1q) to attend, for a certain number of school days, a
13 school under sub. (1).

14 **SECTION 24.** 346.63 (4) of the statutes is amended to read:

15 346.63 (4) If a person is convicted under sub. (1) ~~or a local ordinance in~~
16 ~~conformity therewith, or sub. (2),~~ the court shall proceed under s. 343.30 (1q).

17 **SECTION 25.** 346.635 of the statutes is amended to read:

18 **346.635 Report arrest or out-of-service order to department.**

19 Whenever a law enforcement officer arrests a person for a violation of s. 346.63 ~~(1)~~,
20 (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or
21 940.25, or s. 940.09 where the offense involved the use of a vehicle, the officer shall
22 notify the department of the arrest and of issuance of an out-of-service order under
23 s. 343.305 (7) (b) or (9) (am) as soon as practicable.

24 **SECTION 26.** 346.65 (2) (am) 1. of the statutes is amended to read:

1 346.65 (2) (am) 1. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
2 Except as provided in subds. 2. to 5. 7. and par. (f), shall be fined not less than \$150
3 nor more than \$300 and imprisoned for not ^{more} less than 5 days ~~not more than 30 days~~
4 or both.

5 **SECTION 27.** 346.65 (2) (f) 1. of the statutes is repealed.

6 **SECTION 28.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and
7 amended to read:

8 346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor
9 vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1),
10 the applicable minimum and maximum fines and imprisonment under par. (am) 2.
11 1. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects
12 a person to a penalty under par. (am) 3., 4., 4m., 5., 6., or 7. when there is a minor
13 passenger under 16 years of age in the motor vehicle is a felony and the place of
14 imprisonment shall be determined under s. 973.02.

15 **SECTION 29.** 346.65 (2e) of the statutes is amended to read:

16 346.65 (2e) If the court determines that a person does not have the ability to
17 pay the costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g), the court
18 may reduce the costs, or fine, ~~and forfeiture~~ imposed and order the person to pay,
19 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)
20 (c), the difference between the amount of the reduced costs and fine ~~or forfeiture~~ and
21 the amount of costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g).

22 **SECTION 30.** 346.65 (2g) (a) of the statutes is amended to read:

23 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)
24 to provide that a defendant perform community service work for a public agency or
25 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.

1 (2) (am) ~~2., 3., 4., 4m., and 5.,~~ (f), and (g) and except as provided in par. (ag), the court
2 ~~may provide that a defendant perform community service work for a public agency~~
3 ~~or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub.~~
4 ~~(2) (am) 1. or~~ may require a person who is subject to sub. (2) to perform community
5 service work for a public agency or a nonprofit charitable organization in addition
6 to the penalties specified under sub. (2).

7 **SECTION 31.** 346.65 (2g) (ag) of the statutes is amended to read:

8 346.65 (2g) (ag) If the court determines that a person does not have the ability
9 to pay a fine imposed under sub. (2) (am) ~~2., 3., 4., 4m., or 5.,~~ (f), or (g), the court shall
10 require the defendant to perform community service work for a public agency or a
11 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
12 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
13 fine. Each hour of community service performed in compliance with an order under
14 this paragraph shall reduce the amount of the fine owed by an amount determined
15 by the court.

16 **SECTION 32.** 346.65 (2g) (am) of the statutes is amended to read:

17 346.65 (2g) (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
18 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
19 that the defendant is provided a written statement of the terms of the community
20 service order and that the community service order is monitored. Any organization
21 or agency acting in good faith to which a defendant is assigned pursuant to an order
22 under this subsection has immunity from any civil liability in excess of \$25,000 for
23 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
24 ~~issuance of a community service order under this subsection does not entitle an~~

1 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
2 ~~under ch. 977.~~

3 **SECTION 33.** 346.65 (2g) (d) of the statutes is amended to read:

4 346.65 (2g) (d) With respect to imprisonment under sub. (2) (am) 1. or 2., the
5 court shall ensure that the person is imprisoned for not less than 5 days or ordered
6 to perform not less than 30 days of community service work under s. 973.03 (3) (a).

7 **SECTION 34.** 346.65 (2i) of the statutes is amended to read:

8 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05
9 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
10 s. 973.05 (3) (a) who violated s. 346.63 (1) or (2), 940.09 (1), or 940.25, to visit a site
11 that demonstrates the adverse effects of substance abuse or of operating a vehicle
12 while under the influence of an intoxicant or other drug, including an alcoholism
13 treatment facility approved under s. 51.45 or an emergency room of a general
14 hospital ~~in lieu of part or all of any forfeiture imposed or~~ in addition to any penalty
15 imposed. The court may order the defendant to pay a reasonable fee, based on the
16 person's ability to pay, to offset the costs of establishing, maintaining, and
17 monitoring the visits ordered under this subsection. The court may order a visit to
18 the site only if agreed to by the person responsible for the site. If the opportunities
19 available to visit sites under this subsection are fewer than the number of defendants
20 eligible for a visit, the court shall, when making an order under this subsection, give
21 preference to defendants who were under 21 years of age at the time of the offense.
22 The court shall ensure that the visit is monitored. A visit to a site may be ordered
23 for a specific time and a specific day to allow the defendant to observe victims of
24 vehicle accidents involving intoxicated drivers. If it appears to the court that the
25 defendant has not complied with the court order to visit a site or to pay a reasonable

1 fee, the court may order the defendant to show cause why he or she should not be held
2 in contempt of court. Any organization or agency acting in good faith to which a
3 defendant is assigned pursuant to an order under this subsection has immunity from
4 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
5 defendant. ~~The issuance or possibility of the issuance of an order under this~~
6 ~~subsection does not entitle an indigent defendant who is subject to sub. (2) (am) 1.~~
7 ~~to representation by counsel under ch. 977.~~

8 **SECTION 35.** 346.65 (2m) (a) of the statutes is amended to read:

9 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
10 ~~(1) (am) or (b) or~~ ^{plain} (5) or a local ordinance in conformity ^{with s. 346.63(5)} therewith, the court shall
11 review the record and consider the aggravating and mitigating factors in the matter.
12 If the amount of alcohol in the person's blood or urine or the amount of a restricted
13 controlled substance in the person's blood is known, the court shall consider that
14 amount as a factor in sentencing. The chief judge of each judicial administrative
15 district shall adopt guidelines, under the chief judge's authority to adopt local rules
16 under SCR 70.34, for the consideration of aggravating and mitigating factors.

17 **SECTION 36.** 346.655 (1) of the statutes, as affected by 2013 Wisconsin Act 20,
18 is amended to read:

19 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
20 ~~(1) or (5), or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or~~
21 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose
22 a driver improvement surcharge under ch. 814 in an amount of \$435 in addition to
23 the fine or forfeiture, plus costs, fees, and other surcharges imposed under ch. 814.

24 **SECTION 37.** 349.03 (2m) of the statutes is amended to read:

1 349.03 **(2m)** Notwithstanding sub. (2), a municipal court may suspend a license
2 for a violation of a local ordinance in conformity with s. 346.63 ~~(1)~~ or (2m).

3 **SECTION 38.** 349.03 (4) of the statutes is amended to read:

4 349.03 (4) If a violation under s. 343.305 or 346.63 or a local ordinance in
5 conformity with s. 346.63 ~~(1)~~, (5) or (7) occurs within a law enforcement officer's
6 jurisdiction, he or she may enforce the violation anywhere in the state.

7 **SECTION 39.** 349.06 (1m) of the statutes is amended to read:

8 349.06 **(1m)** Notwithstanding sub. (1), a municipal court may suspend a license
9 for a violation of a local ordinance in conformity with s. 346.63 ~~(1)~~ or (2m).

10 **SECTION 40.** 800.035 (2) (a) 3. of the statutes is amended to read:

11 800.035 **(2)** (a) 3. Inform the defendant of the right to a jury trial on charges
12 filed under ~~an~~ a local ordinance in conformity with s. 346.63 ~~(1)~~ or (5).

13 **SECTION 41.** 800.035 (5) (a) of the statutes is amended to read:

14 800.035 **(5)** (a) If a defendant is charged with a violation of ~~an~~ a local ordinance
15 in conformity with s. 346.63 ~~(1)~~ or (5), the municipality may, by ordinance, require
16 the defendant to appear in person before the court.

17 **SECTION 42.** 800.035 (5) (c) of the statutes is amended to read:

18 800.035 **(5)** (c) If a defendant charged with a violation of ~~an~~ a local ordinance
19 that is in conformity with s. 346.63 ~~(1)~~ or (5) pleads not guilty and within 10 days after
20 entry of the plea requests a jury trial and pays the required fees, the municipal judge
21 shall promptly transmit all papers and fees in the cause to the clerk of the circuit
22 court of the county where the violation occurred for a jury trial under s. 345.43. The
23 plea of not guilty and request for jury trial may be made in writing. If the person
24 refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305
25 (9) to determine if the person's refusal was proper, the papers and fees involved in

1 that action shall be transferred to the same circuit court, which shall conduct the
2 refusal hearing. Upon receipt of the request, the circuit court shall set a time for trial.
3 Any deposit made personally or in writing is forfeited upon nonappearance at the
4 time set for trial. The required fee for a jury is prescribed in s. 814.61 (4).

5 **SECTION 43.** 967.055 (2) (a) of the statutes is amended to read:

6 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
7 or amend a charge under s. 346.63 ~~(1) or~~ (5) or a local ordinance in conformity
8 therewith, or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved
9 the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall
10 apply to the court. The application shall state the reasons for the proposed
11 amendment or dismissal. The court may approve the application only if the court
12 finds that the proposed amendment or dismissal is consistent with the public's
13 interest in deterring the operation of motor vehicles by persons who are under the
14 influence of an intoxicant, a controlled substance, a controlled substance analog or
15 any combination of an intoxicant, controlled substance and controlled substance
16 analog, under the influence of any other drug to a degree which renders him or her
17 incapable of safely driving, or under the combined influence of an intoxicant and any
18 other drug to a degree which renders him or her incapable of safely driving, in
19 deterring the operation of motor vehicles by persons with a detectable amount of a
20 restricted controlled substance in his or her blood, or in deterring the operation of
21 commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.
22 The court may not approve an application to amend the vehicle classification from
23 a commercial motor vehicle to a noncommercial motor vehicle unless there is
24 evidence in the record that the motor vehicle being operated by the defendant at the
25 time of his or her arrest was not a commercial motor vehicle.

1 **SECTION 44.** 967.055 (3) (a) of the statutes is amended to read:

2 967.055 (3) (a) A violation of s. 346.63 ~~(1) or~~ (5) or a local ordinance in
3 conformity therewith.

4 **SECTION 45.** 967.055 (3) (b) of the statutes is amended to read:

5 967.055 (3) (b) A violation of s. 346.63 (1), (2), or (6).

6 **SECTION 46.** 972.11 (3m) of the statutes is amended to read:

7 972.11 **(3m)** A court may not exclude evidence in any criminal action or traffic
8 forfeiture action for violation of s. 346.63 (1) or (5), or a local ordinance in conformity
9 with s. 346.63 ~~(1) or~~ (5), on the ground that the evidence existed or was obtained
10 outside of this state.

insert → *16-10 ✓*
11 **SECTION 47. Initial applicability.**

12 (1) This act first applies to violations committed on the effective date of this
13 subsection but does not preclude the counting of other convictions, suspensions, or
14 revocations as prior convictions, suspensions, or revocations for purposes of
15 administrative action by the department of transportation or sentencing by a court.

16 **SECTION 48. Effective date.**

April
✓
17 (1) This act takes effect on July 1, 2015 or the day after the publication of the
18 2015-17 biennial budget bill, whichever is later. *✓*

19 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4045/lins
RPN:wlj:jm

1 insert 16-10:

2 **SECTION 1. Fiscal changes.**

3 (1) COMMUNITY CORRECTIONS SERVICES. In the schedule under section 20.005 (3)
4 of the statutes for the appropriation to the department of corrections under section
5 20.410 (1) (b) of the statutes, as affected by the acts of 2013, the dollar amount is
6 increased by \$333,400 for the second fiscal year of the fiscal biennium in which this
7 subsection takes effect to increase the authorized FTE positions for the department
8 by 8.5 GPR positions.

9 (2) PRIVATE BAR AND INVESTIGATORS. In the schedule under section 20.005 (3) of
10 the statutes for the appropriation to the public defender board under section 20.550
11 (1) (d) of the statutes, as affected by the acts of 2013, the dollar amount is increased
12 by \$647,900 for the second fiscal year of the fiscal biennium in which this subsection
13 takes effect for the purpose for which the appropriation is made.

14 (3) JOINT FINANCE SUPPLEMENT. In the schedule under section 20.005 (3) of the
15 statutes for the appropriation to the joint committee on finance under section 20.865
16 (4) (a) of the statutes, as affected by the acts of 2013, the dollar amount is increased
17 by \$745,300 for the second fiscal year of the fiscal biennium in which this subsection
18 takes effect to support new prosecutor positions that are created as a result of this
19 act.



Stays

2013 BILL

Regen

1 AN ACT *to repeal* 343.307 (1) (a) and 346.65 (2) (f) 1.; *to renumber and amend*
2 346.65 (2) (f) 2.; and *to amend* 66.0114 (1) (b), 85.53 (1) (d), 343.16 (5) (a), 343.30
3 (1q) (a), 343.30 (1q) (b) (intro.), 343.30 (1q) (b) 4m., 343.30 (1q) (h), 343.303,
4 343.305 (3) (a), 343.305 (3) (b), 343.305 (5) (b), 343.305 (9) (a) 1., 343.305 (9) (a)
5 5. a., 343.305 (9) (d), 343.307 (1) (c), 343.307 (2) (a), 343.307 (2) (c), 343.44 (2p)
6 (b), 343.44 (2p) (c), 345.20 (2) (c), 345.24 (1), 345.60 (3), 346.63 (4), 346.635,
7 346.65 (2) (am) 1., 346.65 (2e), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2g) (am),
8 346.65 (2g) (d), 346.65 (2i), 346.65 (2m) (a), 346.655 (1), 349.03 (2m), 349.03 (4),
9 349.06 (1m), 800.035 (2) (a) 3., 800.035 (5) (a), 800.035 (5) (c), 967.055 (2) (a),
10 967.055 (3) (a), 967.055 (3) (b) and 972.11 (3m) of the statutes; **relating to:**
11 making the first offense of operating a motor vehicle while under the influence
12 of an intoxicant a crime, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a first offense of operating a motor vehicle while under the influence of an intoxicant (OWI-related offense) is a civil violation. A person who

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commits a first OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Under this bill, a person who commits a first OWI-related offense on or after April 1, 2015, is guilty of a crime and may be fined not less than \$150 nor more than \$300 and imprisoned for not more than five days, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0114 (1) (b) of the statutes is amended to read:

2 66.0114 (1) (b) Local ordinances, except as provided in this paragraph or ss.
3 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any
4 or all violations under those ordinances, may designate the manner in which the
5 stipulation is to be made, and may fix the penalty to be paid. When a person charged
6 with a violation for which stipulation of guilt or no contest is authorized makes a
7 timely stipulation and pays the required penalty, plus costs, fees, and surcharges
8 imposed under ch. 814, to the designated official, the person need not appear in court
9 and no witness fees or other additional costs, fees, or surcharges may be imposed
10 under ch. 814 unless the local ordinance so provides. ~~A court appearance is required~~
11 ~~for a violation of a local ordinance in conformity with s. 346.63 (1).~~

12 **SECTION 2.** 85.53 (1) (d) of the statutes is amended to read:

13 85.53 (1) (d) “Operating while intoxicated” means a violation of s. 346.63 ~~(1) or~~
14 (2m) or a local ordinance in conformity therewith or of s. 346.63 (1), (2), or (6), 940.09
15 (1) or 940.25.

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1 **SECTION 3.** 343.16 (5) (a) of the statutes is amended to read:

2 343.16 (5) (a) The secretary may require any applicant for a license or any
3 licensed operator to submit to a special examination by such persons or agencies as
4 the secretary may direct to determine incompetency, physical or mental disability,
5 disease, or any other condition that might prevent such applicant or licensed person
6 from exercising reasonable and ordinary control over a motor vehicle. If the
7 department requires the applicant to submit to an examination, the applicant shall
8 pay for the examination. If the department receives an application for a renewal or
9 duplicate license after voluntary surrender under s. 343.265 or receives a report from
10 a physician, physician assistant, as defined in s. 448.01 (6), advanced practice nurse
11 prescriber certified under s. 441.16 (2), or optometrist under s. 146.82 (3), or if the
12 department has a report of 2 or more arrests within a one-year period for any
13 combination of violations of s. 346.63 (1) or (5) or a local ordinance in conformity with
14 s. 346.63 (1) or (5) or a law of a federally recognized American Indian tribe or band
15 in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or
16 s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a
17 vehicle, the department shall determine, by interview or otherwise, whether the
18 operator should submit to an examination under this section. The examination may
19 consist of an assessment. If the examination indicates that education or treatment
20 for a disability, disease or condition concerning the use of alcohol, a controlled
21 substance or a controlled substance analog is appropriate, the department may order
22 a driver safety plan in accordance with s. 343.30 (1q). If there is noncompliance with
23 assessment or the driver safety plan, the department shall revoke the person's
24 operating privilege in the manner specified in s. 343.30 (1q) (d).

25 **SECTION 4.** 343.30 (1q) (a) of the statutes is amended to read:

BILL**SECTION 4**

1 343.30 (1q) (a) If a person is convicted under s. 346.63 (1) ~~or a local ordinance~~
2 ~~in conformity therewith~~, the court shall proceed under this subsection. If a person
3 is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the
4 use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred
5 by the department acting under s. 343.16 (5) (a), the department shall proceed under
6 pars. (c) and (d) without the order of the court.

7 **SECTION 5.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

8 343.30 (1q) (b) (intro.) For persons convicted under s. 346.63 (1) ~~or a local~~
9 ~~ordinance in conformity therewith~~:

10 **SECTION 6.** 343.30 (1q) (b) 4m. of the statutes is amended to read:

11 343.30 (1q) (b) 4m. If there was a minor passenger under 16 years of age in the
12 motor vehicle at the time of the violation that gave rise to the conviction under s.
13 346.63 (1) ~~or a local ordinance in conformity with s. 346.63 (1)~~, the applicable
14 minimum and maximum revocation periods under subd. 2., 3. or 4. for the conviction
15 are doubled.

16 **SECTION 7.** 343.30 (1q) (h) of the statutes is amended to read:

17 343.30 (1q) (h) The court or department shall provide that the period of
18 suspension or revocation imposed under this subsection shall be reduced by any
19 period of suspension or revocation previously served under s. 343.305 if the
20 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63
21 (1) or (2m), ~~or a local ordinance in conformity therewith~~ with s. 346.63 (2m), arise out
22 of the same incident or occurrence. The court or department shall order that the
23 period of suspension or revocation imposed under this subsection run concurrently
24 with any period of time remaining on a suspension or revocation imposed under s.
25 343.305 arising out of the same incident or occurrence. The court may modify an

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1 occupational license authorized under s. 343.305 (8) (d) in accordance with this
2 subsection.

3 **SECTION 8.** 343.303 of the statutes is amended to read:

4 **343.303 Preliminary breath screening test.** If a law enforcement officer
5 has probable cause to believe that the person is violating or has violated s. 346.63 (1)
6 ~~or~~ (2m) or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or
7 940.25, or s. 940.09 where the offense involved the use of a vehicle, or if the officer
8 detects any presence of alcohol, a controlled substance, controlled substance analog
9 or other drug, or a combination thereof, on a person driving or operating or on duty
10 time with respect to a commercial motor vehicle or has reason to believe that the
11 person is violating or has violated s. 346.63 (7) or a local ordinance in conformity
12 therewith, the officer, prior to an arrest, may request the person to provide a sample
13 of his or her breath for a preliminary breath screening test using a device approved
14 by the department for this purpose. The result of this preliminary breath screening
15 test may be used by the law enforcement officer for the purpose of deciding whether
16 or not the person shall be arrested for a violation of s. 346.63 ~~(1)~~, (2m), (5), or (7) or
17 a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6), 940.09 (1), or
18 940.25 and whether or not to require or request chemical tests as authorized under
19 s. 343.305 (3). The result of the preliminary breath screening test shall not be
20 admissible in any action or proceeding except to show probable cause for an arrest,
21 if the arrest is challenged, or to prove that a chemical test was properly required or
22 requested of a person under s. 343.305 (3). Following the screening test, additional
23 tests may be required or requested of the driver under s. 343.305 (3). The general
24 penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary
25 breath screening test.

BILL**SECTION 9**

SECTION 9. 343.305 (3) (a) of the statutes is amended to read:

343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest subsequent to a refusal under par. (ar), a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

SECTION 10. 343.305 (3) (b) of the statutes is amended to read:

343.305 (3) (b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) may be administered to the person.

SECTION 11. 343.305 (5) (b) of the statutes is amended to read:

343.305 (5) (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 ~~(1)~~, (2m) or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog or any other drug, or any

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1 combination of alcohol, controlled substance, controlled substance analog and any
2 other drug in the blood only by a physician, registered nurse, medical technologist,
3 physician assistant or person acting under the direction of a physician.

4 **SECTION 12.** 343.305 (9) (a) 1. of the statutes is amended to read:

5 343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed
6 the person under arrest for a violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance
7 in conformity therewith or s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25 or had
8 requested the person to take a test under sub. (3) (ar).

9 **SECTION 13.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

10 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the
11 person was driving or operating a motor vehicle while under the influence of alcohol,
12 a controlled substance or a controlled substance analog or any combination of
13 alcohol, a controlled substance and a controlled substance analog, under the
14 influence of any other drug to a degree which renders the person incapable of safely
15 driving, or under the combined influence of alcohol and any other drug to a degree
16 which renders the person incapable of safely driving, having a restricted controlled
17 substance in his or her blood, or having a prohibited alcohol concentration or, if the
18 person was driving or operating a commercial motor vehicle, an alcohol
19 concentration of 0.04 or more and whether the person was lawfully placed under
20 arrest for violation of s. 346.63 ~~(1)~~, (2m) or (5) or a local ordinance in conformity
21 therewith or s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

22 **SECTION 14.** 343.305 (9) (d) of the statutes is amended to read:

23 343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court
24 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined
25 adversely to the person, the court shall proceed under sub. (10). If one or more of the

BILL**SECTION 14**

1 issues is determined favorably to the person, the court shall order that no action be
2 taken on the operating privilege on account of the person's refusal to take the test in
3 question. This section does not preclude the prosecution of the person for violation
4 of s. 346.63 ~~(1)~~, (2m), (5), or (7) or a local ordinance in conformity therewith, or s.
5 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

6 **SECTION 15.** 343.307 (1) (a) of the statutes is repealed.

7 **SECTION 16.** 343.307 (1) (c) of the statutes is amended to read:

8 343.307 (1) (c) Convictions for violations under s. 346.63 (1) or (2) or 940.25,
9 or s. 940.09 where the offense involved the use of a vehicle.

10 **SECTION 17.** 343.307 (2) (a) of the statutes is amended to read:

11 343.307 (2) (a) Convictions for violations under s. 346.63 ~~(1)~~ or (5), or a local
12 ordinance in conformity with either section s. 346.63 (5).

13 **SECTION 18.** 343.307 (2) (c) of the statutes is amended to read:

14 343.307 (2) (c) Convictions for violations under s. 346.63 (1), (2), or (6).

15 **SECTION 19.** 343.44 (2p) (b) of the statutes is amended to read:

16 343.44 **(2p)** (b) Violating s. 346.63 ~~(1)~~ or (5) or a local ordinance in conformity
17 therewith.

18 **SECTION 20.** 343.44 (2p) (c) of the statutes is amended to read:

19 343.44 **(2p)** (c) Violating s. 346.63 (1), (2), or (6), 940.09 (1), or 940.25.

20 **SECTION 21.** 345.20 (2) (c) of the statutes is amended to read:

21 345.20 **(2)** (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
22 actions for violations of s. 346.63 ~~(1)~~ or (5) or a local ordinance in conformity
23 therewith.

24 **SECTION 22.** 345.24 (1) of the statutes is amended to read:

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1 345.24 (1) A person arrested under s. 346.63 ~~(1) or~~ (5) or ~~an~~ a local ordinance
2 in conformity therewith or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the
3 offense involved the use of a vehicle, may not be released until 12 hours have elapsed
4 from the time of his or her arrest or unless a chemical test administered under s.
5 343.305 shows that the person has an alcohol concentration of less than 0.04, but the
6 person may be released to his or her attorney, spouse, relative, or other responsible
7 adult at any time after arrest.

8 **SECTION 23.** 345.60 (3) of the statutes is amended to read:

9 345.60 (3) In addition to other penalties provided by law for violation of s.
10 346.63 (1) ~~or a local ordinance in conformity therewith, or s. 346.63 or~~ (2) or 940.25,
11 or s. 940.09 where the offense involved the use of a vehicle, the convicted person may
12 be required under s. 343.30 (1q) to attend, for a certain number of school days, a
13 school under sub. (1).

14 **SECTION 24.** 346.63 (4) of the statutes is amended to read:

15 346.63 (4) If a person is convicted under sub. (1) ~~or a local ordinance in~~
16 ~~conformity therewith, or sub. (2),~~ the court shall proceed under s. 343.30 (1q).

17 **SECTION 25.** 346.635 of the statutes is amended to read:

18 **346.635 Report arrest or out-of-service order to department.**

19 Whenever a law enforcement officer arrests a person for a violation of s. 346.63 ~~(1),~~
20 (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or
21 940.25, or s. 940.09 where the offense involved the use of a vehicle, the officer shall
22 notify the department of the arrest and of issuance of an out-of-service order under
23 s. 343.305 (7) (b) or (9) (am) as soon as practicable.

24 **SECTION 26.** 346.65 (2) (am) 1. of the statutes is amended to read:

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SECTION 26

1 346.65 (2) (am) 1. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
2 Except as provided in subds. 2. to 5. 7. and par. (f), shall be fined not less than \$150
3 nor more than \$300 and imprisoned for not more than 5 days, or both.

4 **SECTION 27.** 346.65 (2) (f) 1. of the statutes is repealed.

5 ~~**SECTION 28.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and~~
6 ~~amended to read:~~

7 ~~346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor~~
8 ~~vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1),~~
9 ~~the applicable minimum and maximum fines and imprisonment under par. (am) 2-~~
10 ~~1. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects~~
11 ~~a person to a penalty under par. (am) 3., 4., 4m., 5., 6., or 7. when there is a minor~~
12 ~~passenger under 16 years of age in the motor vehicle is a felony and the place of~~
13 ~~imprisonment shall be determined under s. 973.02.~~

14 **SECTION 29.** 346.65 (2e) of the statutes is amended to read:

15 346.65 (2e) If the court determines that a person does not have the ability to
16 pay the costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g), the court
17 may reduce the costs, or fine, ~~and forfeiture~~ imposed and order the person to pay,
18 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)
19 (c), the difference between the amount of the reduced costs and fine ~~or forfeiture~~ and
20 the amount of costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g).

21 **SECTION 30.** 346.65 (2g) (a) of the statutes is amended to read:

22 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)
23 to provide that a defendant perform community service work for a public agency or
24 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
25 (2) (am) ~~2., 3., 4., 4m., and 5.,~~ (f), and (g) and except as provided in par. (ag), the court

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1 ~~may provide that a defendant perform community service work for a public agency~~
2 ~~or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub.~~
3 ~~(2) (am) 1. or~~ may require a person who is subject to sub. (2) to perform community
4 service work for a public agency or a nonprofit charitable organization in addition
5 to the penalties specified under sub. (2).

6 **SECTION 31.** 346.65 (2g) (ag) of the statutes is amended to read:

7 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
8 to pay a fine imposed under sub. (2) (am) ~~2., 3., 4., 4m., or 5.,~~ (f), or (g), the court shall
9 require the defendant to perform community service work for a public agency or a
10 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
11 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
12 fine. Each hour of community service performed in compliance with an order under
13 this paragraph shall reduce the amount of the fine owed by an amount determined
14 by the court.

15 **SECTION 32.** 346.65 (2g) (am) of the statutes is amended to read:

16 346.65 **(2g)** (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
17 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
18 that the defendant is provided a written statement of the terms of the community
19 service order and that the community service order is monitored. Any organization
20 or agency acting in good faith to which a defendant is assigned pursuant to an order
21 under this subsection has immunity from any civil liability in excess of \$25,000 for
22 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
23 ~~issuance of a community service order under this subsection does not entitle an~~
24 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
25 ~~under ch. 977.~~

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SECTION 33

1 **SECTION 33.** 346.65 (2g) (d) of the statutes is amended to read:

2 346.65 (2g) (d) With respect to imprisonment under sub. (2) (am) 1. or 2., the
3 court shall ensure that the person is imprisoned for not less than 5 days or ordered
4 to perform not less than 30 days of community service work under s. 973.03 (3) (a).

5 **SECTION 34.** 346.65 (2i) of the statutes is amended to read:

6 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05
7 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
8 s. 973.05 (3) (a) who violated s. 346.63 (1) or (2), 940.09 (1), or 940.25, to visit a site
9 that demonstrates the adverse effects of substance abuse or of operating a vehicle
10 while under the influence of an intoxicant or other drug, including an alcoholism
11 treatment facility approved under s. 51.45 or an emergency room of a general
12 hospital ~~in lieu of part or all of any forfeiture imposed or~~ in addition to any penalty
13 imposed. The court may order the defendant to pay a reasonable fee, based on the
14 person's ability to pay, to offset the costs of establishing, maintaining, and
15 monitoring the visits ordered under this subsection. The court may order a visit to
16 the site only if agreed to by the person responsible for the site. If the opportunities
17 available to visit sites under this subsection are fewer than the number of defendants
18 eligible for a visit, the court shall, when making an order under this subsection, give
19 preference to defendants who were under 21 years of age at the time of the offense.
20 The court shall ensure that the visit is monitored. A visit to a site may be ordered
21 for a specific time and a specific day to allow the defendant to observe victims of
22 vehicle accidents involving intoxicated drivers. If it appears to the court that the
23 defendant has not complied with the court order to visit a site or to pay a reasonable
24 fee, the court may order the defendant to show cause why he or she should not be held
25 in contempt of court. Any organization or agency acting in good faith to which a

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1 defendant is assigned pursuant to an order under this subsection has immunity from
2 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
3 defendant. ~~The issuance or possibility of the issuance of an order under this~~
4 ~~subsection does not entitle an indigent defendant who is subject to sub. (2) (am) 1.~~
5 ~~to representation by counsel under ch. 977.~~

6 **SECTION 35.** 346.65 (2m) (a) of the statutes is amended to read:

7 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
8 (1) (am) or (b) or (5) or a local ordinance in conformity ~~therewith~~ with s. 346.63 (5),
9 the court shall review the record and consider the aggravating and mitigating factors
10 in the matter. If the amount of alcohol in the person's blood or urine or the amount
11 of a restricted controlled substance in the person's blood is known, the court shall
12 consider that amount as a factor in sentencing. The chief judge of each judicial
13 administrative district shall adopt guidelines, under the chief judge's authority to
14 adopt local rules under SCR 70.34, for the consideration of aggravating and
15 mitigating factors.

16 **SECTION 36.** 346.655 (1) of the statutes, as affected by 2013 Wisconsin Act 20,
17 is amended to read:

18 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
19 ~~(1) or~~ (5), or a local ordinance in conformity therewith, or s. 346.63 (1), (2), or (6) or
20 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall impose
21 a driver improvement surcharge under ch. 814 in an amount of \$435 in addition to
22 the fine or forfeiture, plus costs, fees, and other surcharges imposed under ch. 814.

23 **SECTION 37.** 349.03 (2m) of the statutes is amended to read:

24 349.03 (2m) Notwithstanding sub. (2), a municipal court may suspend a license
25 for a violation of a local ordinance in conformity with s. 346.63 ~~(1) or~~ (2m).

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1 **SECTION 38.** 349.03 (4) of the statutes is amended to read:

2 349.03 (4) If a violation under s. 343.305 or 346.63 or a local ordinance in
3 conformity with s. 346.63 ~~(1)~~, (5) or (7) occurs within a law enforcement officer's
4 jurisdiction, he or she may enforce the violation anywhere in the state.

5 **SECTION 39.** 349.06 (1m) of the statutes is amended to read:

6 349.06 (1m) Notwithstanding sub. (1), a municipal court may suspend a license
7 for a violation of a local ordinance in conformity with s. 346.63 ~~(1)~~ or (2m).

8 **SECTION 40.** 800.035 (2) (a) 3. of the statutes is amended to read:

9 800.035 (2) (a) 3. Inform the defendant of the right to a jury trial on charges
10 filed under ~~an~~ a local ordinance in conformity with s. 346.63 ~~(1)~~ or (5).

11 **SECTION 41.** 800.035 (5) (a) of the statutes is amended to read:

12 800.035 (5) (a) If a defendant is charged with a violation of ~~an~~ a local ordinance
13 in conformity with s. 346.63 ~~(1)~~ or (5), the municipality may, by ordinance, require
14 the defendant to appear in person before the court.

15 **SECTION 42.** 800.035 (5) (c) of the statutes is amended to read:

16 800.035 (5) (c) If a defendant charged with a violation of ~~an~~ a local ordinance
17 that is in conformity with s. 346.63 ~~(1)~~ or (5) pleads not guilty and within 10 days after
18 entry of the plea requests a jury trial and pays the required fees, the municipal judge
19 shall promptly transmit all papers and fees in the cause to the clerk of the circuit
20 court of the county where the violation occurred for a jury trial under s. 345.43. The
21 plea of not guilty and request for jury trial may be made in writing. If the person
22 refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305
23 (9) to determine if the person's refusal was proper, the papers and fees involved in
24 that action shall be transferred to the same circuit court, which shall conduct the
25 refusal hearing. Upon receipt of the request, the circuit court shall set a time for trial.

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1 Any deposit made personally or in writing is forfeited upon nonappearance at the
2 time set for trial. The required fee for a jury is prescribed in s. 814.61 (4).

3 **SECTION 43.** 967.055 (2) (a) of the statutes is amended to read:

4 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
5 or amend a charge under s. 346.63 ~~(1) or~~ (5) or a local ordinance in conformity
6 therewith, or s. 346.63 (1), (2), or (6) or 940.25, or s. 940.09 where the offense involved
7 the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall
8 apply to the court. The application shall state the reasons for the proposed
9 amendment or dismissal. The court may approve the application only if the court
10 finds that the proposed amendment or dismissal is consistent with the public's
11 interest in deterring the operation of motor vehicles by persons who are under the
12 influence of an intoxicant, a controlled substance, a controlled substance analog or
13 any combination of an intoxicant, controlled substance and controlled substance
14 analog, under the influence of any other drug to a degree which renders him or her
15 incapable of safely driving, or under the combined influence of an intoxicant and any
16 other drug to a degree which renders him or her incapable of safely driving, in
17 deterring the operation of motor vehicles by persons with a detectable amount of a
18 restricted controlled substance in his or her blood, or in deterring the operation of
19 commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.
20 The court may not approve an application to amend the vehicle classification from
21 a commercial motor vehicle to a noncommercial motor vehicle unless there is
22 evidence in the record that the motor vehicle being operated by the defendant at the
23 time of his or her arrest was not a commercial motor vehicle.

24 **SECTION 44.** 967.055 (3) (a) of the statutes is amended to read:

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1 967.055 (3) (a) A violation of s. 346.63 ~~(1) or~~ (5) or a local ordinance in
2 conformity therewith.

3 **SECTION 45.** 967.055 (3) (b) of the statutes is amended to read:

4 967.055 (3) (b) A violation of s. 346.63 (1), (2), or (6).

5 **SECTION 46.** 972.11 (3m) of the statutes is amended to read:

6 972.11 **(3m)** A court may not exclude evidence in any criminal action or traffic
7 forfeiture action for violation of s. 346.63 (1) or (5), or a local ordinance in conformity
8 with s. 346.63 ~~(1) or~~ (5), on the ground that the evidence existed or was obtained
9 outside of this state.

10 **SECTION 47. Fiscal changes.**

11 (1) COMMUNITY CORRECTIONS SERVICES. In the schedule under section 20.005 (3)
12 of the statutes for the appropriation to the department of corrections under section
13 20.410 (1) (b) of the statutes, as affected by the acts of 2013, the dollar amount is
14 increased by \$333,400 for the second fiscal year of the fiscal biennium in which this
15 subsection takes effect to increase the authorized FTE positions for the department
16 by 8.5 GPR positions.

17 (2) PRIVATE BAR AND INVESTIGATORS. In the schedule under section 20.005 (3) of
18 the statutes for the appropriation to the public defender board under section 20.550
19 (1) (d) of the statutes, as affected by the acts of 2013, the dollar amount is increased
20 by \$647,900 for the second fiscal year of the fiscal biennium in which this subsection
21 takes effect for the purpose for which the appropriation is made.

22 (3) JOINT FINANCE SUPPLEMENT. In the schedule under section 20.005 (3) of the
23 statutes for the appropriation to the joint committee on finance under section 20.865
24 (4) (a) of the statutes, as affected by the acts of 2013, the dollar amount is increased
25 by \$745,300 for the second fiscal year of the fiscal biennium in which this subsection

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1 takes effect to support new prosecutor positions that are created as a result of this
2 act.

3 **SECTION 48. Initial applicability.**

4 (1) This act first applies to violations committed on the effective date of this
5 subsection but does not preclude the counting of other convictions, suspensions, or
6 revocations as prior convictions, suspensions, or revocations for purposes of
7 administrative action by the department of transportation or sentencing by a court.

8 **SECTION 49. Effective date.**

9 (1) This act takes effect on April 1, 2015.

10 (END)